STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL J. VERPLOEGH,

Plaintiff-Appellee,

v

DANIEL S. DEIGERT,

Defendant-Appellant.

UNPUBLISHED
July 15, 1997

No. 180157
Kent Circuit Court
LC No. 85-046453-CK

Before: Bandstra, P.J., and Hoekstra and J.M. Batzer*, JJ.

PER CURIAM.

Defendant appeals from an order for partial satisfaction of judgment entered on October 14, 1994, which specified that $6,552.01 remains outstanding on the original judgment entered against defendant on April 11, 1986. We affirm the conclusion in the 1994 order that the original judgment against defendant had not been fully satisfied. However, we conclude that the amount determined to be outstanding on the original judgment was incorrect and remand for further proceedings consistent with this opinion.

Defendant first claims that the 1994 order was erroneous because this case had been fully resolved in a 1990 order entered in another case filed against Ronald Meinert by the Deigert family, No. 88-57392-CK ("the Meinert case"). We disagree. Although certain comments made on the record by the trial judge prior to entering the 1990 order create some confusion as to the impact of that order on the instant case, it is a well established rule that judges speak only through their orders. *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977). The 1990 order specifically only dismissed the Meinert case with prejudice; it did not dismiss this case. The order referenced this case and plaintiff only with respect to the interpleader motion filed in this case by Meinert concerning funds Meinert had paid in escrow to the court. That portion of the 1990 order thus concerned plaintiff's right to money from Meinert, not defendant. We do not conclude that the trial court erred by determining that the 1990 order did not extinguish plaintiff's claim against defendant for amounts owing on the original judgment entered in this case.

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant also argues that the 1994 order was in error because it failed to provide credit to defendant for $2,136.04, the amount paid to Meinert out of funds that had been placed in escrow with the court. This amount was paid to Meinert with the agreement of plaintiff, who received the remaining portion of the escrowed funds. We agree with defendant that the amount paid to Meinert should have been credited to defendant as partial satisfaction of the judgment in this case. Satisfaction of all or part of plaintiff's judgment against Meinert, as garnishee, constituted satisfaction of the judgment to the "same extent" against defendant. MCR 3.101(O)(7). Although plaintiff did not actually receive the entire amount paid by Meinert into escrow, the 1990 order essentially determined that the entire amount had been constructively received by plaintiff. Although the trial court in the present case reasoned that defendant was not injured by the settlement between plaintiff and Meinert with regard to the escrowed amount, we conclude that defendant was prejudiced. But for the settlement agreement, plaintiff would have retained the entire escrow amount and that entire amount would have been credited against the judgment owing by defendant in this case. Having agreed with Meinert to return $2,136.04 to Meinert, plaintiff cannot now claim that this amount should not be credited to defendant with respect to the judgment owing.

We affirm the order for partial satisfaction of judgment but remand for amendment of that order to reflect a credit of $2,136.04 to defendant. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ James M. Batzer